**IN THE UNITED STATES DISTRICT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| HIGHLANDVIEW INC., | § | |
| | § | |
| Plaintiff, | § | |
| v. | § | CIVIL ACTION NO. 3:09-CV-1482-M |
| | § | |
| HAWKER BEECHCRAFT | § | |
| CORPORATION, f/k/a RAYTHEON | § | |
| AIRCRAFT COMPANY, | § | |
| | § | |
| Defendant. | § | |

## MEMORANDUM  OPINION AND ORDER

Before the Court is Plaintiff Highlandview Inc.'s ("Highlandview") Motion to Permit

Joinder and Remand to State Court [Docket Entry #15].  For the reasons explained below, the

Motion is **GRANTED**.

### BACKGROUND FACTS AND PROCEDURAL HISTORY

Highlandview owns an aircraft that was manufactured and sold by Defendant Hawker

Beechcraft Corporation, f/k/a Raytheon Aircraft Company ("HBC").  The aircraft was under

warranty.  Highlandview's aircraft sustained damage and HBC made the necessary repairs, but

required Highlandview to deposit funds in escrow for the repairs.  When HBC refused to return

the funds in escrow, Highlandview filed suit in state court.[1]

HBC removed to this Court and asserted that pilot error was the sole cause of the damage

to Highlandview's aircraft.  The only entity to operate the aircraft was Business Jet Services

("BJS"), which owes contractual indemnity to Highlandview for any damage it causes to the

aircraft.  HBC now moves for permission to join BJS as a defendant and for remand on the basis

that BJS's joinder will defeat diversity jurisdiction.

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[1] Highlandview originally sued two Defendants, but amended to substitute the correct name of the party to this suit.
For simplicity, the correct name will be used throughout.

ANALYSIS

"If after removal the plaintiff seeks to join additional defendants whose joinder would

destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the

action to the State court."[2]  In determining whether to permit post-removal joinder of a

defendant, courts consider: (1) the extent to which the purpose of the joinder is to defeat federal

jurisdiction; (2) whether plaintiff has been dilatory in seeking joinder; (3) whether plaintiff

would be significantly injured if joinder is not allowed; and (4) any other factors bearing on the

equities.[3]

Highlandview seeks to join BJS as a defendant because HBC claims that pilot error

caused the damage to the aircraft.  BJS is a necessary party to the lawsuit in the event the jury

determines that BJS, rather than HBC, caused the damage to the aircraft.  If BJS is not joined as

a party, Highlandview would not be able to obtain relief for the damages it sustained without

filing a separate lawsuit against BJS.  Highlandview has not been dilatory in seeking joinder.

Finally, HBC has already consented to joinder of BJS in this suit.[4]  These factors lead the Court

to conclude that BJS's joinder should be allowed.

Highlandview is incorporated in Texas, with its principal place of business in Texas.  BJS

is a Texas limited partnership with its principal place of business in Dallas, Texas.  The general

partner of BJS is Business Jet Management, LLC, a Texas limited liability corporation.  BJS is

therefore a citizen of Texas whose joinder defeats this Court's diversity jurisdiction, and this

case must be remanded to state court pursuant to 28 U.S.C. § 1447(e). [5]

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[2] 28 U.S.C. § 1447(e).
[3] *Hensgens v. Deere & Co.*, 833 F.2d 1179, 1182 (5th Cir. 1987).
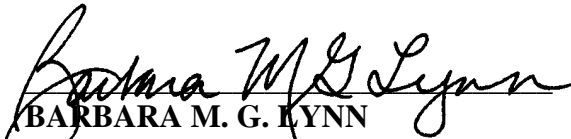[4] *See* Docket Entry #10.
[5] *See Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-96 (1990) (holding that the citizenship of an artificial entity is based upon the citizenship of each of its members); *see also Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of a limited liability company is determined by the citizenship of all of its members).

CONCLUSION

For the reasons stated above, Highlandview's Motion to Permit Joinder and Remand to

State Court is GRANTED.


**SO ORDERED.**

January 5, 2010.


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BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS